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FILE: [REDACTED]
[EAC 04 086 50165]

OFFICE: VERMONT SERVICE CENTER

DATE: NOV 28 2006

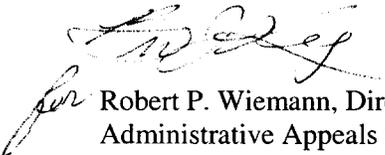
IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded to the director for further action.

The applicant claims to be a native and citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the application because the applicant had failed to establish that she: (1) was eligible for late registration; (2) had continuously resided in the United States since February 13, 2001; and (3) had been continuously physically present from March 9, 2001, to the date of filing the application.

The record reveals that the applicant did file an initial application for TPS during the initial registration period on January 22, 2002 (EAC 02 094 51504). The director denied that application on May 27, 2003, after determining that the applicant had abandoned her application by failing to respond to his request for evidence (on November 7, 2002).

The applicant filed a subsequent Form I-821 application on January 30, 2004 (EAC 04 086 50165). The director denied this second application on August 10, 2004, because the applicant had failed to respond to her notice of intent to deny dated March 31, 2004, requesting evidence to establish her eligibility for filing under the provisions of late registration, and to establish continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the TPS application.

On appeal, the applicant asserts that she did respond to the director's letter of March 31, 2004, and that she is resubmitting the evidence. To support her claim, she submits a copy of a Certified Mail Receipt indicating that correspondence was received at the Vermont Service Center on May 10, 2004.

The record of proceeding also shows that the applicant did respond to the director's November 7, 2002, request for evidence (EAC 02 094 51504). That response was received by the Vermont Service Center on January 2, 2003, prior to the director's May 27, 2003, decision to deny the initial application based on abandonment. The record does not reflect the director's acknowledgement or review of the applicant's prior application before a decision was rendered on the current application.

The evidence contained in this file is not sufficient to support the director's decision of denial. Therefore, the case will be remanded. The director shall review CIS records pertaining to this applicant and issue a new decision that, if adverse to the applicant, shall be certified to the AAO for review. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The case is remanded for further action consistent with the above and entry of a decision.